

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
RENTON, WASHINGTON 98057-3356

In the matter of the petition of

**The Boeing Company**

for an exemption from § 26.35 of Title 14,  
Code of Federal Regulations

**Regulatory Docket No. FAA-2010-0905**

**GRANT OF EXEMPTION**

By letter 7-7E1W-RIC10-071, dated September 1, 2010, Mr. Robert I. Carlson, AEW&C Certification Manager, The Boeing Company, 20403 68<sup>th</sup> Avenue South, 18-26 Building 1<sup>st</sup> Floor MC: 84-08, Kent, Washington, 98032, petitioned the Federal Aviation Administration (FAA) for an exemption from § 26.35 of Title 14, Code of Federal Regulations (14 CFR). This exemption is requested for Boeing Model 737-700 airplanes converted to Airborne Early Warning & Control (AEW&C) military airplanes in accordance with Supplemental Type Certificate (STC) ST01999SE. Part 26, subpart D, requirements are related to airplane fuel tank flammability.

**The petitioner requests relief from the following regulation:**

**Section 26.35 Changes to type certificates affecting fuel tank flammability**, which requires flammability exposure analyses, assessments to determine if critical design configuration control limitations are compromised, and the development of design changes and service instructions.

**The petitioner supports its request with the following.**

The following information is quoted from The Boeing Company's petition with minor revisions for clarity. The complete petition may be found in the Department of Transportation's Federal Document Management System, Docket No. FAA-2010-0905.

Extent of Relief Requested (14 CFR 11.81(c)):

The relief requested extends across new installations associated with the AEW&C modifications as documented in STC ST01999SE and relief from the entire content of 14 CFR 26.35.

Why This Exemption Would Benefit the Public Interest (14 CFR 11.81(d)):

Granting this exemption will benefit the public interest by freeing up valuable FAA resources no longer required to evaluate and approve any enhanced instructions for continued airworthiness, as well as design modifications and associated compliance data submittals to support these rule changes, particularly when no operators will be required to incorporate them.

Why This Exemption Would Not Adversely Affect Public Safety (14 CFR 11.81(e)):

Public safety will not be adversely affected because the Model 737-700 AEW&C is a military airplane that will not be operated for commercial passenger transportation or compensation for hire. Further, it is cost prohibitive to reconfigure an airplane for such use after it has been converted to an AEW&C military airplane, making it highly unlikely to ever be operated under part 121, 125, or 129.

Summary for Publication in the Federal Register (14 CFR 11.81(f)):

The petitioner seeks exemption from the requirements of 14 CFR 26.35 for Model 737-700 airplanes that have incorporated the AEW&C modification, on the basis that these airplanes are not subjected to an operational rule that would require an update of their maintenance programs. These airplanes are not currently operated commercially within or outside the United States, and they are not expected to be in the future.

**Federal Register publication**

A summary of the petition was published in the *Federal Register* on November 24, 2010 (75 FR 71793). No comments were received regarding the exemption request.

**The FAA's analysis**

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holder's (DAH) petition for exemption from part 26 requirements. These criteria were meant as a general guide to making decisions about such requests and were not developed for any specific request. The FAA uses these criteria as a starting point for making its decision. However, other factors may also be considered before a final decision is made on any particular exemption request.

The criteria are illustrated in the table that follows.



The determination of whether an airplane is operating under part 121, 125, or 129 (N-registered) is based on whether that particular airplane is listed on an air carrier's Operations Specifications.

The rationale behind the criteria contained in the table above is this: The rule requires DAHs to develop data for use by operators. If there are no operators for a particular airplane who are required by the rules to use such data, it would be a poor use of resources for the DAH to develop it. Therefore, it would benefit both the DAH and the public as a whole to spend resources on more important safety issues rather than on developing data that will not be used. In addition, granting such an exemption would not adversely affect safety because there are no airplanes that would be required to incorporate the data, nor is it likely that there will be any in the future.

The FAA has reviewed The Boeing Company's request and has determined that granting this exemption would not have an adverse effect on public safety and would be in the public interest based on the following information:

The FAA notes that Boeing Model 737-700 airplanes modified in accordance with STC ST01999SE have been heavily modified to convert them to AEW&C airplanes for military use, and that they are not used for commercial passenger transportation or compensation for hire. The petitioner also stated that the Model 737-700 AEW&C military airplane has been specially designed and configured for military operations under exclusive authority of the military airworthiness authority of the customer's country. Upon delivery, each airplane is removed from the FAA registry. No airplanes are operating, or expected to operate in the future, under parts 121, 125, or 129. The FAA finds that, since Model 737-700 AEW&C military airplane is used only in military applications, there is no FAA operating requirement to install the flammability reduction means or to keep it operational if already installed.

As a result, Boeing Model 737-700 airplanes converted to AEW&C military airplanes in accordance with STC ST01999SE meet the baseline exemption criteria for part 26. There are no other factors to be considered regarding The Boeing Company's petition for exemption.

#### **Additional information**

This exemption grants relief to The Boeing Company from having to meet the airworthiness requirements of § 26.35. This exemption does not grant relief from the related operational requirements contained in §§ 121.1117, 125.509, and 129.117. Should a person choose to operate a Model 737-700 AEW&C military airplane under part 121, 125, or 129 beyond the operational compliance deadlines as stated in §§ 121.1117, 125.509, and 129.117, that person will be required to comply with those operational requirements.

In addition, this exemption does not provide any relief from part 25 requirements determined to be applicable when developing a certification basis in accordance with § 21.101.

### **The FAA's decision**

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, The Boeing Company is hereby granted an exemption from § 26.35 for STC ST01999SE. The limitations and conditions section of STC ST01999SE must list this exemption and state that:

- compliance with § 26.35 has not been demonstrated, and
- §§ 121.1117, 125.509, and 129.117 require that a Flammability Impact Mitigation Means be installed by the compliance times specified in those regulations, if required by § 26.35.

Issued in Renton, Washington, on DEC 18 2012



Suzanne Masterson  
Acting Manager, Transport Airplane Directorate  
Aircraft Certification Service